IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ELISHA JOINER,	)	
	)	No.:
Plaintiff,	)	
v.	)	
	)	
UNITED STATES OF AMERICA	)	
	)	
Defendant.	)	

COMPLAINT

COMES NOW Plaintiff Elisha Joiner, by and through his attorneys, and for his Complaint against Defendant United States of America alleges:

1. Plaintiff Elisha Joiner (hereinafter "Plaintiff") is now and was at all times herein mentioned a citizen of the United States and resident of Murphysboro, Illinois, located within the Southern District of Illinois.

2. Plaintiff received medical care and treatment at the Marion Veterans Administration Medical Center ("VA Hospital") located in Marion, Illinois, within the Southern District of Illinois.

3. This is a claim under the Federal Tort Claims Act ("FTCA"), pursuant to 28 U.S.C. §1346 (b) and 28 U.S.C. §2671 et seq. for personal injuries sustained by Plaintiff.

Jurisdiction

4. Plaintiff alleges that agents, servants, and employees of the VA Hospital negligently treated Plaintiff, causing personal injuries and damages, as more fully set forth below.

5. Plaintiff alleges that the agents, servants, and employees were acting within their scope of employment for the United States Government when they negligently treated Plaintiff, causing personal injuries and damages, as more fully set forth below.

6. The acts and omissions of the Department of Veterans Affairs and/or the Department of Health and Human Services were those of its agents, servants, and employees who were acting in the scope and course of their agency, service, and employment for Defendant

7. On or about September 21, 2016, Plaintiff filed an administrative Federal Tort Claim regarding Plaintiff's personal injuries which was within two years after the claim occurred pursuant to 28 U.S.C. §2401 (b). A copy is attached hereto as "Exhibit 1".

8. On or about March 7, 2017, the U.S. Department of Veterans Affairs notified counsel for Plaintiff that Plaintiff's Federal Tort Claim was being denied. A copy of the correspondence denying this claim is attached hereto as "Exhibit 2".

9. Plaintiff now timely files this suit pursuant to 28 U.S.C. §2675 (a).

10. Jurisdiction of this Court is founded upon the provisions of 28 U.S.C. §1346 (b)(1) and 28 U.S.C. §2671 et seq.

Venue

11. Venue is proper in the United States District Court, Southern District of Illinois, pursuant to 28 U.S.C. § 1402 (b) in that Marion, Illinois is within the judicial district of the Southern District of Illinois, and Plaintiff resides in Murphysboro, Illinois and was first injured in Marion, Illinois.

General Allegations

12. Plaintiff presented to the VA Hospital in 2014 with urinary voiding complaints including a weak stream, difficulty with urination, and a feeling of fullness.

13. On December 2, 2014 Plaintiff underwent a Uroflow study that demonstrated a peak flow rate of 30cc per second.

14. Following this December 2, 2014 study, Plaintiff was advised to undergo an operation for urinary obstruction by physicians at the VA Hospital.

15. On January 23, 2015, Plaintiff underwent an operation for urinary obstruction at the VA Hospital under the care of Dr. Vijay Aher.

16. On January 23, 2015 Plaintiff was scheduled for a transurethral vaporization of the prostate.

17. At some point, the January 23, 2015 operation was converted to a transurethral resection of the prostate.

18. Plaintiff underwent a significant prostate resection and suffered a blood loss of 300cc during the January 23, 2015 procedure.

19. In February 2015, Plaintiff complained of incontinence and intermittent gross hematuria during his follow-up appointment.

20. In April, 2015 Plaintiff experienced additional incontinence on standing, and was still requiring narcotics for pain.

21. Experiencing no improvement, Plaintiff sought a second opinion from Sam Stokes, M.D. in Carbondale, Illinois.

22. Dr. Stokes believed Plaintiff’s condition required management at a tertiary center, and referred Plaintiff to The Washington University.

23. At The Washington University, Plaintiff was told his incontinence was due to a damaged external urinary sphincter secondary to the prostatic vaporization and resection.

24. On January 11, 2016, Plaintiff underwent placement of an artificial urinary sphincter.

25. Since Plaintiff's January 23, 2015 operation, Plaintiff has experienced erectile dysfunction consistent with permanent injury to the erectile nerves surrounding the prostate.

26. Following the January 11, 2016 placement of an artificial urinary sphincter, Plaintiff underwent placement of an inflatable penile prosthesis for management of his erectile dysfunction.

Count I: Medical Malpractice

COMES NOW Plaintiff for Count I of his Complaint against Defendant, states as follows:

27. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs one through twenty-six as though fully set forth herein.

28. During the course of Plaintiff's medical care and treatment by Defendant, Defendant owed a duty to Plaintiff to use that degree of skill and learning ordinarily used by skillful, careful, and prudent members of the medical profession in providing medical services.

29. Defendant breached its duty to Plaintiff and were thereby negligent in failing and omitting to adequately and properly treat Plaintiff in the following respects, to wit:

a. Defendant failed to properly plan and prepare for the transurethral vaporization of the prostate procedure;

b. Defendant failed to properly prepare and plan for the performance of a transurethral resection of the prostate;

c. Defendant failed to obtain proper consent for the performance of the procedure;

d. Defendant performed an unwarranted transurethral resection of the prostate procedure on Plaintiff;

e. Defendant failed to properly perform the transurethral vaporization of the prostate;

f. Defendant failed to properly perform a transurethral resection of the prostate;

g. Defendant failed to properly manage Plaintiff post-operatively following the January 23, 2015, procedure, and;

h. Such other and further acts and omissions as the evidence and discovery will reveal.

30. As a direct and proximate cause of the negligence of Defendant, Plaintiff sustained permanent urological and neurological injuries; he has suffered severe pain and discomfort and will continue to suffer pain and discomfort in the future; his ability to work, labor and enjoy the ordinary pursuits of life has been permanently impaired and diminished; he has suffered mental and emotional anguish, frustration, anxiety and depression, and will continue to suffer the same in the future.

31. As a direct and proximate result of the aforesaid occurrences, the negligence of Defendant, and the resulting injuries, Plaintiff was required to undergo medical, rehabilitative, and diagnostic care and treatment and was caused to incur or become indebted for such medical care and treatment, and he will require further care and treatment in the future for which he will become further indebted.

32. As a direct and proximate result of the aforesaid occurrences, the negligence of Defendant, and the resulting injuries, Plaintiff has lost wages, earnings, income and the capacity to earn income, and he will continue to lose wages, earnings, and income and a loss of earnings capacity in the future.

34. Attached hereto as “Exhibit 3” is a letter of merit from Dr. Arnold Bullock, M.D. at The Washington University School of Medicine, Department of Surgery, Division of Urologic Surgery, 4960 Children’s Place, St. Louis, Missouri, 63110, pursuant to 735 ILCS 5/2-622.

WHEREFORE, Plaintiff respectfully requests this Court enter judgment against Defendant, for his costs expended, and for such other relief as is just and reasonable.

ROSSITER & BOOCK, LLC

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